

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

75-1119

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B
PMS

Docket No. 75-1119

UNITED STATES OF AMERICA,
Appellee,

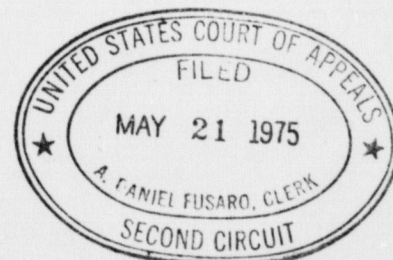
-against-

JOSE J. URIBE,
Appellant.

On Appeal From the United States District Court
For the Eastern District of New York.

APPELLANT'S APPENDIX

Attorney for Appellant
GEORGE SHEINBERG
Attorney At Law
66 Court Street
Brooklyn, N.Y. 11201
UL 2-8282



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EJB:GWS:dmb
F.#733,632

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
★ AUG 23 1973 ★

- - - - - X

UNITED STATES OF AMERICA

INDICTMENT

-against-

JOSE JAHIR URIBE

Defendant.

Cr. No. _____
T. 18, U.S.C., §922(j) and
924(a)

- - - - - X

THE GRAND JURY CHARGES

73CR 780

COUNT ONE

On or about the 26th day of February 1973 within the Eastern District of New York, the defendant JOSE JAHIR URIBE, did knowingly sell and dispose of stolen firearms, that is, three (3) Sterling Arms Company .380 caliber pistols, model PPL, serial numbers 004111, 003371 and 003516, and one (1) Ruger .22 caliber revolver, model Single Six, serial number 2141077, which firearms when stolen were moving as, were part of, and constituted interstate commerce from Miami, Florida to Buffalo, New York and Southport, Connecticut, the defendant JOSE JAHIR URIBE knowing and having reasonable cause to believe that said firearms were stolen. (Title 18, United States Code, §922(j) and 924(a).)

A TRUE BILL

Jose A. Colon
Foreman

Robert A. Mearns by RWS
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

NEAHER, J. PLATT, J.

ATTORNEYS

vs.

CLOSED

DATE	PROCEEDINGS
8/23/73	Before DOOLING, J. - Indictment filed
9-13-73	Before NEAHER, J - Case called - Deft & counsel George Sheinberg present - Maria Elena Cardena sworn as interpreter - deft arraigned and enters a plea of not guilty - Bail contd.
9-13-73	By Neaher, J - Order apptg counsel filed.
8-13-73	By Neaher, J - Order for Expert Services filed (authorization)
10/1/73	Magistrates file 73M1377 inserted into Criminal file 73CR780
10-15-73	Before NEAHER, J - Case called - adjd to Oct. 18, 1973(Trial)
2-5-74	Notice of Motion filed for granting a hearing to determine the audibility and admissibility of certain tape recordings, etc.
3-28-74	Letter from A.U.S.A. Scotti to Chambers filed re: adjournment of trial to any time after 4-4-74

PROCEEDINGS

- Letter of Mar. 29, 1974 filed received from Chambers indicating that deft consents to adjournment of trial to June 17, 1974.
- 74 Before NEAHER, J - case called & adjd to June 18, 1974. (motion)
- 4 Before NEAHER, J - case called - adjd to June 18, 1974 for trial.
- 4 Before NEAHER, J - case called & adjd to August 26, 1974 (for trial and & criminal motion)
- Before Neaheer, J - case called - Deft present with counsel
- G. Sheinberg - hearing held - hearing adjd without date. (suppression hearing)
- 4 Govts Memorandum of Law filed.
- Stenographers transcript filed dated 8-26-74.
- 74 Before PLATT, J - case called - deft & counsel George Sheinberg present - trial ordered and BEGUN - Jurors selected and sworn - Trial contd to Oct. 1, 1974.
- 74 Before Neaheer, J - case called - respectfully referred to Judge Platt.
- 4 Before Platt, J - case called - trial resumed - Trial contd to Oct. 2, 1974.
- Before PLATT, J. - Case called - deft and counsel present - Trial resumed - Court charges jury - requests to charge - Alternates discharged - marshals sworn - Jury retires to deliberate - Jury returns with a verdict of guilty to count 1 - Jury polled - jury discharged - Bail set at \$5,000.00 surety bond - 10% cash Stayed to 10-4-74 - Trial concluded
- Financial affidavit filed
- By TRAVIA, J. - Order of sustenance filed
- 4 Voucher for Expert Services filed.
- 4 Stenographers transcript filed dated Oct. 2, 1974
- 4 Voucher for Expert Services filed (Trial transcript)
- 4 Voucher for Expert Services filed
- 74 Stenographers transcript filed dated October 1, 1974.
- 4 Magistrate's file 74 M 1448 inserted into CR file.
- 4 Before Platt, J - case called - deft & counsel George Sheinberg present - deft sentenced to imprisonment for 4 years - ~~ex~~ deft to serve 6 mos and execution of balance of sentence is suspended and the deft is placed on probation for 3½ years and the deft shall pay a fine of \$1,000 to be paid in a lump sum or in installments as directed by the Probation Dept. Execution of sentence stayed to 1-6-75 @ 10:00 am.
- 74 Judgment and Commitment and Order of Probation filed - certified copies to Marshal and Probation.

[illegible]

1
2 THE COURT: Ladies and gentlemen, I am going to
3 read to you my charge on the law. I make it a practice
4 of reading the charge. It is a little more difficult
5 for you to follow, I realize, but it minimizes the
6 risk of error and I prefer to do it, in that way, and
7 it does put a little heavier burden on you, but please
8 bear with me.

9 Try to stay with me and listen to what I say,
10 and if you find at any point you do not hear me or I
11 am not getting the words across to you, raise your
12 hand and I will slow down and make my statements
13 louder.

14 Now that you have heard the evidence and the
15 argument, it becomes my duty to give the instructions
16 of the Court as to the law applicable to this case.

17 It is your duty as jurors to follow the law as
18 stated in the instructions of the Court, and to apply
19 the rules of the law so given to the facts as you
20 find them from the evidence in the case.

21 You are not to single out one instruction
22 alone as stating the law, but must consider the
23 instructions as a whole.

24 Neither are you to be concerned with the
25 wisdom of any rule of law as stated by the Court.

1
2 Regardless of any opinion you may have as to what the
3 law ought to be, it would be a violation of your sworn
4 duty to base a verdict upon any other view of the law
5 than that given in the instruction of the Court; just
6 as it would be a violation of your sworn duty, as the
7 judges of the facts, to base a verdict upon anything
8 but the evidence in the case.

9 You must not permit yourselves to be governed
10 by sympathy, bias, prejudice or any other considerations
11 not founded on evidence and these instructions on the
12 law.

13 Justice through trial by jury must always
14 depend upon the willingness of such individual juror
15 to seek the truth as to the facts from the same
16 evidence presented to all the jurors and to arrive at
17 a verdict by applying the same rules of law as given
18 in the instructions of the Court.

19 You have been chosen and sworn as jurors in
20 this case to try the issues of fact presented by the
21 allegations of the indictment and the denial by the
22 not guilty plea of the accused.

23 You are to perform this duty without bias or
24 prejudice as to any party. Again, the law does not
25 permit jurors to be governed by sympathy, prejudice,

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2 or public opinion. Both the accused and the public
3 expect that you will carefully and impartially
4 consider all the evidence in the case, follow the law
5 as stated by the Court and reach a just verdict,
6 regardless of the consequences.

7 I am not sending the exhibits which have been
8 received in evidence with you as you retire for your
9 deliberations. You are entitled, however, to see any
10 or all of these exhibits as you consider your
11 verdict. I suggest that you begin your deliberations
12 and then, if it would be helpful to you, you may
13 ask for any or all of the exhibits simply by sending
14 a note to me through one of the bailiffs.

15 You are also entitled, if you so request, to
16 have any portion or all of the tapes re-played to you
17 and to have the transcript in front of you during any
18 such re-play.

19 The law presumes the defendant to be innocent
20 of crime. Thus, a defendant, although accused,
21 begins the trial with a clean slate -- with no
22 evidence against him. And the law permits nothing
23 but legal evidence presented before the jury to be
24 considered in support of any charge against the
25 accused. So the presumption of innocence alone is

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2 sufficient to acquit a defendant, unless the jurors
3 are satisfied beyond a reasonable doubt of the
4 defendant's guilt after careful and impartial
5 consideration of all the evidence in the case.

6 The burden is always upon the prosecution to
7 prove guilt beyond a reasonable doubt. This burden
8 never shifts to a defendant; for the law never imposes
9 upon the defendant in a criminal case the burden or
10 duty of calling any witnesses or producing any
11 evidence.

12 A reasonable doubt does not mean a doubt
13 arbitrarily and capriciously asserted by a juror
14 because of his or her reluctance to perform an
15 unpleasant task. It does not mean a doubt arising
16 from the natural sympathy which we all have for others.

17 It is not necessary for the Government to
18 prove the guilt of the defendant beyond all possible
19 doubt. Because if that were the rule, very few people
20 would ever be convicted. It is practically impossible
21 for a person to be absolutely sure and convinced of
22 any controverted fact, which by its nature, is not
23 susceptible of mathematical certainty. In consequence,
24 the law says that a doubt should be reasonable doubt
25 and not a possible doubt.

1
2 A reasonable doubt is a doubt based upon reason
3 and common sense, the kind of doubt that would make a
4 reasonable person hesitate to act. Proof beyond
5 reasonable doubt must therefore be proof of such a
6 convincing character that you would be willing to rely
7 and act upon it unhesitatingly in the most important
8 of your own affairs.

9 The jury will remember that a defendant is
10 never to be convicted on mere suspicion or conjecture.

11 Again, a reasonable doubt means a doubt
12 sufficient to cause a prudent person to hesitate to
13 act in the most important affairs of her or his life.

14 An indictment is but a form or method of
15 accusing a defendant of a crime. It is not evidence
16 of any kind against the accused.

17 There are two types of evidence from which the
18 jury may properly find the defendant guilty of a crime.
19 One is direct evidence -- such as the testimony of an
20 eyewitness. The other is circumstantial evidence --
21 the proof of facts and circumstances which rationally
22 imply the existence or non-existence of other facts
23 because such other facts usually follow according to
24 the common experience of mankind.

25 Thus, the footprint of a man in the sand

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2 implied to Robinson Crusoe that there was another man
3 with him on the desert island and indeed there was,
4 the man Friday.

5 Thus, on the one hand you may have direct
6 evidence of the issue, and on the other hand you may
7 have circumstantial evidence of the issue. The law
8 does not hold that one type of evidence is necessarily
9 of better quality than the other.

10 The law requires only that the Government prove
11 its case beyond reasonable doubt both on the direct
12 and circumstantial evidence.

13 At times the jury might feel that circumstantial
14 evidence is of better quality. At other times they
15 may feel direct evidence is of better quality. That
16 judgment is left entirely to you.

17 As a general rule, the law makes no distinction
18 between direct and circumstantial evidence, but simply
19 requires that, before convicting a defendant, the jury
20 be satisfied of the defendant's guilt beyond a
21 reasonable doubt from all the evidence in the case.

22 It is charged in the only count in the indict-
23 ment that on or about February 26, 1973 within the
24 Eastern District of New York, the defendant did
25 knowingly sell and dispose of stolen firearms, that is,

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2 three Sterling Arms Company 380 caliber pistols,
3 Model PPL, serial number 0041111, 003371 and 003516,
4 and one Ruger .22 caliber revolver, model 6, serial
5 number 2141077, which firearms when stolen were
6 moving as, were part of, and consisted of interstate
7 commerce from Miami, Florida, to Buffalo, New York,
8 and Southport, Connecticut, the defendant knowing
9 and having reasonable cause to believe that said
10 firearms were stolen in violation of Section 922(j)
11 of Title 18 of the United States Code.

12 Section 922(j) of Title 18 provides in
13 pertinent part that: It shall be unlawful for any
14 person to sell or dispose of any stolen firearm
15 which is moving as, which is a part of, or which
16 constitutes, interstate or foreign commerce, knowing
17 or having reasonable cause to believe that the fire-
18 arm was stolen.

19 The following are the essential elements of
20 the crime charged:

21 1. The firearms were stolen.

22 That particular item has been stipulated to
23 and agreed to by both sides, so you are to accept
24 that as a fact and assume that to be a proven fact
25 established to your satisfaction.

1
2 2. The firearms were moving as, or part of,
3 interstate commerce at the time they were stolen.

4 That, too, has been stipulated and agreed to
5 and is an established fact.

6 3. The defendant knew or had reasonable cause
7 to believe that the firearms were stolen.

8 4. The defendant sold and disposed of such
9 stolen firearms, and

10 5. The defendant sold and disposed of the
11 same knowingly and intentionally.

12 The burden is always upon the prosecution to
13 prove beyond a reasonable doubt every essential
14 element of the crime charged.

15 The term firearms means any weapon which will
16 or is designed to or may readily be converted to
17 expel a projectile by an action of an explosive. In
18 this regard, the Government and the defense have
19 entered into a stipulation which was read to you
20 whereby both parties agreed that the four handguns
21 listed in the indictment were test fired and found
22 operable.

23 With respect to knowledge on the part of the
24 defendant that the firearms or guns were stolen, I
25 instruct you that the Government need not establish

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2 that the defendant had actual knowledge that the guns
3 were stolen but it is enough for the Government to
4 establish that the defendant had reasonable cause to
5 believe that the gun was stolen. Thus, you must look
6 to all the facts and circumstances shown by the
7 evidence including the exhibits and determine from
8 all such facts and circumstances whether the
9 defendant should have reasonably concluded that the
10 guns were stolen.

11 The evidence in the case need not establish
12 that the accused actually knew the goods mentioned
13 in the indictment constituted a part of an inter-
14 state shipment.

15 Possession of stolen property, if not satis-
16 factorily explained, is ordinarily a circumstance
17 from which the jury may reasonably, but is not
18 required to, draw the inference and find, in the
19 light of surrounding circumstances shown by the
20 evidence in the case, that the person in possession
21 knew the property had been stolen.

22 In considering whether possession of recently
23 stolen property has been satisfactorily explained,
24 you are reminded that, in the exercise of constitu-
25 tional rights, the accused need not take the witness

1
2 stand and testify. There may be opportunities to
3 explain possession by showing other facts and circum-
4 stances, independent of the testimony of the defendant.

5 You will always bear in mind that the law never
6 imposes upon a defendant in a criminal case the burden
7 or duty of calling witnesses or producing any evidence.

8 It is the exclusive province of the jury to
9 determine whether the facts and circumstances shown by
10 the evidence in the case warrant any inference which
11 the law permits you to draw from the possession of
12 stolen property

13 It was knowingly if done voluntarily and
14 intentionally and not because of mistake or accident
15 or other innocent reason.

16 The purpose of adding the word knowingly was
17 to ensure that no one would be convicted for an act
18 done because of mistake or accident or other innocent
19 reason.

20 I stated before, with respect to an offense
21 such as charged in this case, specific intent must be
22 proved beyond a reasonable doubt before there can be
23 a conviction.

24 An act is done willfully if done voluntarily
25 and intentionally, and with the specific intent to do

1 something the law forbids; that is to say, with bad
2 purpose either to disobey or to disregard the law.
3

4 Intent ordinarily may not be proved directly,
5 because there is no way of fathoming or scrutinizing
6 the operations of the human mind. But you may infer
7 the defendant's intent from surrounding circumstances,
8 ladies and gentlemen.

9 You may consider any statement made and done
10 or omitted by the defendant, and all other facts and
11 circumstances in evidence which indicate his state of
12 mind.

13 It is ordinarily reasonable to infer that a
14 person intends the natural and probable consequences
15 of acts knowingly done or knowingly omitted.

16 Now, there was testimony and there is some
17 reference in the tapes to machine guns and you
18 realize that the four guns that were in evidence that
19 were alleged to have been sold here are not machine
20 guns, but there is testimony with respect to machine
21 guns and that testimony was offered on the question
22 of the defendant's knowledge and intent and is to be
23 used solely by you for that purpose.

24 In that connection, I will give you this
25 specific charge: The fact that the accused may have

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2 committed or may have intended to commit another
3 offense at some time is not any evidence or proof
4 whatever that, at a later time, the accused committed
5 the offense charged in the indictment, even though
6 both offenses are of a like nature. Evidence as to
7 an alleged earlier offense of a like nature may not
8 therefore be considered by the jury in determining
9 whether the accused did the act charged in the
10 indictment. Nor may such evidence be considered for
11 any other purpose whatever, unless the jury first
12 find that other evidence in the case, standing alone,
13 establishes beyond a reasonable doubt that the
14 accused did the act charged in the indictment.

15 If the jury should find beyond a reasonable
16 doubt from the other evidence in the case that the
17 accused did the act charged in the indictment then
18 the jury may consider evidence as to an alleged
19 earlier or later offense of a like nature, in
20 determining the state of mind or intent with which
21 the accused did the act charged in the indictment.
22 And where all the elements of an alleged earlier
23 or later offense of a like nature are established by
24 evidence which is clear and conclusive, the jury may
25 but is not obliged to, draw the inference and find

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2 that in doing the act charged in the indictment, the
3 accused acted willfully and with specific intent, and
4 not because of mistake or accident or other innocent
5 reason.

6 Statements and arguments of counsel are not
7 evidence in the case, unless made as an admission or
8 stipulation of fact. When the attorneys on both
9 sides stipulate or agree as to the existence of a
10 fact, you must, unless otherwise instructed, accept
11 the stipulation as evidence and regard that fact as
12 proved.

13 The Court may take judicial notice of certain
14 facts or events. When the Court declares it will
15 take judicial notice of some fact or event, you may
16 accept the Court's declaration as evidence and
17 regard as proved the fact or event which has been
18 judicially noted, but you are not required to do so
19 since you are the sole judges of the facts.

20 Unless you are otherwise instructed, the
21 evidence in the case always consists of the sworn
22 testimony of the witnesses, regardless of who may
23 have called them; and all exhibits received in
24 evidence, regardless of who may have produced them,
25 and all facts which may have been admitted or

1 stipulated; and all facts and events which may have
2 been judicially noticed; and all applicable presumptions
3 stated in these instructions.
4

5 Any evidence as to which an objection was
6 sustained by the Court, and any evidence ordered
7 stricken by the Court, must be entirely disregarded.

8 Evidence does include, however, what is brought
9 out from witnesses on cross-examination as well as
10 what is testified to on direct examination.

11 Unless you are otherwise instructed, anything
12 you may have seen or heard outside the courtroom is
13 not evidence, and must entirely be disregarded.

14 You are to consider only the evidence in the
15 case and your verdict is to be based on the evidence
16 only. But in your consideration of the evidence, you
17 are not limited to the bald statements of the
18 witnesses. In other words, you are not limited solely
19 to what you see and hear as the witnesses testify.
20 You are permitted to draw from facts which you find
21 have been proved, such reasonable inferences as you
22 feel are justified in the light of experience.

23 Inferences are deductions or conclusions which
24 reason and common sense lead the jury to draw from
25 facts which have been established by evidence in the

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2 case.

3 If a lawyer asks a witness a question which
4 contains an assertion of fact you may not consider
5 the assertion as evidence of that fact. The lawyers'
6 statements are not evidence.

7 Evidence relating to any statement or act or
8 omission, claim to have been made or done by a
9 defendant outside of court and after a crime has been
10 committed, should always be considered with caution
11 and weighed with great care; and all such evidence
12 should be disregarded entirely unless the evidence in
13 the case convinces the jury beyond a reasonable doubt
14 that the statement or act or omission was knowingly
15 made or done.

16 A statement or act or omission is knowingly
17 made or done, if done voluntarily and intentionally,
18 and not because of mistake or accident or other
19 innocent reason.

20 In determining whether any statement or act
21 or omission claimed to have been made by a defendant
22 outside of court, and after a crime has been
23 committed, was knowingly made or done, the jury
24 should consider the age, sex, training, education,
25 occupation and physical and mental condition of the

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2 defendant, and also all other circumstances in
3 evidence surrounding the making of the statement or act
4 or omission, ladies and gentlemen.

5 If the evidence in the case does not convince
6 beyond a reasonable doubt that an admission was made
7 voluntarily and intentionally you should disregard it
8 entirely.

9 On the other hand, if the evidence in the case
10 does show beyond a reasonable doubt that an admission
11 was in fact voluntarily and intentionally made by a
12 defendant, you may consider it as evidence in the
13 case against the defendant who voluntarily and
14 intentionally made the admission.

15 You as jurors are the sole judges of the
16 credibility of the witnesses and the weight their
17 testimony deserves.

18 You should carefully scrutinize all the
19 testimony given, the circumstances under which each
20 witness has testified, and every matter in evidence
21 which tends to show whether a witness is worthy of
22 belief. Consider each witness' intelligence, motive
23 and state of mind, and demeanor and manner while on
24 the stand. Consider the witness' ability to observe
25 the matters as to which he has testified and whether

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2 he impresses you as having an accurate recollection
3 of these matters. Consider also any relation each
4 witness may bear to either side of the case; the
5 manner in which each witness might be affected by the
6 verdict; and the extent to which if at all each
7 witness is either supported or contradicted by other
8 evidence in the case.

9 Inconsistencies or discrepancies in the
10 testimony of a witness, or between the testimony of
11 different witnesses, may or may not cause the jury to
12 discredit such testimony. Two or more persons
13 witnessing an incident or a transaction may see or
14 hear it differently; an innocent misrecollection, like
15 failure of recollection, is not an uncommon experience.
16 In weighing the effect of a discrepancy, always
17 consider whether it pertains to a matter of importance
18 or an unimportant detail, and whether the discrepancy
19 results from innocent error or intentional falsehood.

20 After making your own judgment, you will give
21 the testimony of each witness such credibility, if
22 any, as you may think it deserves.

23 The testimony of an informer who provides
24 evidence against a defendant for pay, or for immunity
25 from punishment, or for personal advantage or

1 vindication, must be examined and weighed by the jury
2 with greater care than the testimony of an ordinary
3 witness. The jury must determine whether the informer's
4 testimony has been affected by interest, or by
5 prejudice against the defendant.
6

7 The testimony of a witness may be discredited
8 or impeached by showing that he previously made
9 statements which are inconsistent with his present
10 testimony. The earlier contradictory statements are
11 admissible only to impeach the credibility of the
12 witness, and not to establish the truth of the
13 statements. It is the province of the jury to
14 determine the credibility, if any, to be given the
15 testimony of a witness who has been impeached.

16 If a witness is shown knowingly to have
17 testified falsely concerning any material matter, you
18 have a right to distrust such witness' testimony in
19 other particulars; and you may reject all the testimony
20 of that witness or give it such credibility as you
21 may think it deserves.

22 The law does not compel a defendant in a
23 criminal case to take the witness stand and testify,
24 and no presumption of guilt may be raised and no
25 inference of any kind may be drawn from the failure

of a defendant to testify.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

It is the duty of the attorney on each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his client because the attorney has made objections.

Upon allowing testimony or other evidence to be introduced over the objection of an attorney, the Court does not, unless expressly stated, indicate any opinion as to the weight or effect of such evidence. As stated before, the jurors are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

When the Court has sustained an objection to a question addressed to a witness the jury must disregard the question entirely, and may draw no inference from the wording of it, or speculate as to what the witness would have said if he had been permitted to answer any question.

You are here to determine the guilt or

innocence of the accused from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons.

So if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the accused, you should so find, even though you may believe one or more other persons are guilty.

But if any reasonable doubt remains in your minds after impartial consideration of all the evidence in the case, it is your duty to find the accused not guilty.

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment.

Each of you must decide the case for himself but do so only after an impartial consideration of the evidence in the case with your fellow jurors.

In the course of your deliberations, do not hesitate to reexamine your own views, and change your

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2 opinion, if convinced it is erroneous.. But do not
3 surrender your honest conviction as to the weight or
4 effect of evidence, solely because of the opinion of
5 your fellow jurors or for the mere purpose of return-
6 ing a verdict.

7 If any reference by the Court or by counsel to
8 matters of evidence does not coincide with your own
9 recollection, it is your recollection which should
10 control during your deliberations.

11 The punishment provided by law for the offenses
12 or offense charged in the indictment is a matter
13 exclusively within the province of the Court, and
14 should never be considered by the jury in any way, in
15 arriving at an impartial verdict as to the guilt or
16 innocence of the accused.

17 Upon retiring to the jury room your forelady
18 will be the juror closest to me in the blue blouse
19 and skirt and she will preside over your deliberations
20 and will be your spokesman here in court unless she
21 declines to do so in which case you will elect another
22 person to act as your foreman or forelady.

23 Remember at all times you are not partisans.
24 You are judges -- judges of the facts. Your sole
25 interest is to seek the truth from the evidence in the

case.

There is nothing peculiarly different in the way a jury should consider the evidence in a criminal case, from that in which all reasonable persons treat any question depending upon evidence presented to them. You are expected to use your good sense; consider the evidence in the case for only those purposes for which it has been admitted and give it reasonable and fair consideration and construction, in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If the accused be proved guilty beyond a reasonable doubt say so. If not so proved guilty, say so.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by a marshal signed by your foreman or by one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing and the Court will never communicate with any member of the jury on any subject touching the merits of the case, otherwise than in writing, or orally here in open court.

You will note from the oath about to be taken

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2 by the marshals that they too, as well as all other
3 persons, are forbidden to communicate in any way or
4 manner with any member of the jury on any subject
5 touching the merits of the case.

6 Bear in mind also that you are never to reveal
7 to any person -- not even to the Court -- how the
8 jury stands, numerically or otherwise, on the
9 question of the guilt or innocence of the accused,
10 until after you have reached a unanimous verdict.

11 Now I will ask the Clerk to swear the Deputy
12 Marshal and then I am going to excuse you for just a
13 few moments and I will discuss the charge with the
14 lawyers and I will ask you to come back.

15 In that brief moment that you are excused do
16 not begin your deliberations and do not discuss the
17 case. Wait in your seats until after the marshal has
18 been sworn.

19 (The Clerk thereupon swore the marshal.)

20 THE COURT: All right, ladies and gentlemen,
21 go into the jury room .

22 (The jury withdrew from the courtroom at
23 12:00 noon.)

24 (The following occurred out of hearing of the
25 jury.)

RECEIVED

MAY 21 10 46 AM '75

EASTERN DISTRICT
OF NEW YORK

P. Carmona

